

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL E. HAYS)	
Claimant)	
VS.)	
)	
SUMMIT MASONRY, INC.)	Docket No. 1,001,465
Respondent)	
AND)	
)	
LIBERTY REGIONAL AGENCY MARKETS)	
and UNITED SECURITY INSURANCE)	
COMPANY/ACE USA)	
Insurance Carriers)	

ORDER

Respondent and its insurance carrier, Liberty Regional Agency Markets, request an order nunc pro tunc from the May 22, 2002 Order of the Workers Compensation Board. Respondent and its insurance carrier contend that the Board's Order contains a clerical error in that it affirmed the April 1, 2002 Order of the Administrative Law Judge when, in fact, the Order was modified as to the date of accident to include a period when United Security Insurance Company/ACE USA provided workers' compensation coverage for respondent.

The modification requested by respondent in its Motion For Order Nunc Pro Tunc is a substantive modification to the Order of the Board and would not be appropriate as an order nunc pro tunc. The purpose of an order nunc pro tunc is to provide a means for entering the actual judgment of the trial court which for one reason or another was not properly recorded. Wallace v. Wallace, 214 Kan. 344, 520 P.2d 1221 (1974). It may not be made to correct a judicial error involving the merits, to enlarge the judgment originally rendered, to supply a judicial omission, or to show what the court should have decided, as distinguished from what it actually did decide. Book v. Everitt Lumbar Co., Inc., 218 Kan. 121, 125, 542 P.2d 669 (1975). Overall, the court is under the duty to make its judgment reflect its intent. If a correction entails a new finding, it is prohibited. Norcross v. Pickrell Drilling Co., 202 Kan. 524, 449 P.2d 569 (1969).

That substantive change to the Board's Order is better left for consideration at the time of regular hearing.

Therefore, the Motion For Order Nunc Pro Tunc filed by respondent and its insurance carrier, Liberty Regional Agency Markets, is denied at this time.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Motion For Order Nunc Pro Tunc filed by respondent and its insurance carrier, Liberty Regional Agency Markets, should be, and is hereby, denied.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant
Gary R. Terrill, Attorney for Respondent (Liberty)
J. Scott Gordon, Attorney for Respondent (United)
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director